

**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of a 1985 Chevrolet Corvette, VIN
1G1YY0780F5128444, Purchased by Martin G.
Mondry

Case No.: 97-H-1043

FINAL DECISION

Martin G. Mondry applied to the Department of Transportation for a title and registration to the 1985 Chevrolet Corvette which is the subject of this hearing. By letter dated May 13, 1997, the Department refused to issue a title or registration to Mr. Mondry for the subject vehicle. By letter dated May 19, 1997, Mr. Mondry filed a request for hearing pursuant to sec. 342.26, Stats., with the Division of Hearings and Appeals. In response to the request, a hearing was scheduled for July 1, 1997. Prior to the hearing, the parties submitted a stipulation of facts and agreed the matter could be decided based on the stipulation of facts. Accordingly, the hearing was canceled.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the parties to this proceeding are certified as follows:

Martin G. Mondry, by

Attorney Robb Arent
3127 West Wisconsin Avenue
Milwaukee, WI 53208

Wisconsin Department of Transportation, by

Attorney Charles M. Kernats
Office of General Counsel
PO Box 7910
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The Administrative Law Judge issued a proposed decision on July 14, 1997. No comments on the proposed decision were received. The proposed decision is adopted as the final decision in this matter.

Findings of Fact

The Administrator finds:

Prior to the hearing the parties filed a stipulation of facts. Based on the stipulation the following relevant facts are found:

1. During April, 1996, Martin G. Mondry contracted to purchase a 1985 Chevrolet Corvette, VIN 1G1YY0780F5128444, from Capitol Corvette. Pursuant to the purchase contract, Mr. Mondry paid \$10,566.50 including tax, license and title fees for the subject vehicle.

2. In April, 1996, Capitol Corvette was a motor vehicle dealer conducting business at 5400 King James Way, Madison, Wisconsin, 53719. Capitol Corvette was in the business of selling used motor vehicles. Capitol Corvette was a sole proprietorship and held motor vehicle dealer license number 1047. David C. Larson was the owner and sole proprietor of Capitol Corvette. On December 9, 1996, the Division of Hearings and Appeals issued an order revoking Capitol Corvette's motor vehicle dealer license (Docket Nos. 96-H-986 and 96-H-993).

3. The Division of Motor Vehicles of the Department of Transportation (DMV) is part of an agency of the State of Wisconsin and is authorized under sec. 218.01, Stats., to license, inspect, and regulate motor vehicle dealers in Wisconsin. The DMV also has the authority under chapters 341 and 342, Stats., to issue titles and registration for motor vehicles in Wisconsin.

4. The 1985 Chevrolet Corvette purchased by Martin Mondry was owned by Rodney Bush. Mr. Bush had entered into a consignment agreement with Capitol Corvette to sell the vehicle. After the sale to Mr. Mondry, Dave Larson gave Mr. Bush a check in the amount of \$3,600. The balance of the vehicle sale price was to be used to pay off a Bank One Madison lien originated by Mr. Bush. Rodney Bush was subsequently notified by Bank One that the lien had not been satisfied.

5. Martin Mondry applied to the DMV for Wisconsin title and registration for the subject vehicle. Because of conflicting ownership claims, the DMV refused to issue a title or registration to Martin Mondry.

6. When Martin Mondry purchased the subject vehicle from Capitol Corvette, he was not aware that it was owned by Rodney Bush or that the Corvette was sold on consignment by Capitol Corvette for Mr. Bush. Capitol Corvette did not inform Mr. Mondry that the Corvette was owned by Bush and that it was being sold on

consignment. Mr. Mondry did not examine the title to the Corvette before purchasing it from Capitol Corvette.

7. Martin Mondry purchased the Corvette at Capitol Corvette's business premises. At the time of the purchase, he believed that Capitol Corvette owned the vehicle and had the authority to sell it.

8. Martin Mondry purchased the subject motor vehicle in good faith and without knowledge that the sale was in violation of the ownership rights of Rodney Bush. Martin Mondry is a buyer in the ordinary course of business of the subject motor vehicle.

Discussion

Martin Mondry has applied to the DMV for a certificate of title and registration for the subject motor vehicle. Pursuant to secs. 342.11(1) and 342.12(2), Stats., the DMV refused to issue a title or registration to Mr. Mondry for the subject motor vehicle.¹

The Wisconsin motor vehicle code is silent with respect to issuance of a title and registration in this situation. The transaction is regulated by the Uniform Commercial code. Pursuant to the sec. 402.403(2), Stats., "[a]ny entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant power to transfer all rights of the entruster to a buyer in ordinary course of business." In the instant matter, Rodney Bush entrusted the subject motor vehicle to Capitol Corvette for the purpose of selling the vehicle. Accordingly, Capitol Corvette had the power to transfer ownership of the vehicle to a buyer.

¹ Sec. 342.11(1), Stats., provides in relevant part.

The department shall refuse issuance of a certificate of title...for any of the following reasons.

(1) The department has reasonable grounds to believe that:

- (a) The person alleged to be the owner of the vehicle is not the owner.
- (b) The application contains a false or fraudulent statement.

Sec. 342.12(2), Stats., provides in relevant part:

(2) If the department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the department, subject to sub. (3), shall either:

- (a) Withhold issuance of a certificate of title until the applicant presents documents reasonable sufficient to satisfy the department as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it; or
- (b) Issue a distinctive certificate of title pursuant to sec. 342.10(4) or 342.283.

Capitol Corvette had authority to transfer interest in the vehicle even if the consignor retained title. In general, the interests of a consignor are not protected unless the consignor complies with one of the three alternatives set forth at sec. 402.326(3), Stats., relating to informing prospective creditors of the consignee of a potential security interest.² Rodney Bush has not alleged that he complied with the provisions of sec. 402.326(3), Stats.

Martin Mondry purchased the vehicle from Capitol Corvette. He was unaware that Capitol Corvette was selling the vehicle on consignment. Even if Mr. Mondry had been aware that the vehicle was being sold on consignment, there is no evidence that he should have suspected that Capitol Corvette did not intend to use the proceeds of this sale to pay the consignor or the sale was fraudulent in any manner.

Mr. Mondry has the burden to prove that he is a buyer in the ordinary course of business. The phrase "buyer in the ordinary course of business" is defined at sec. 402.201(9), Stats. Sec. 401.201(9), Stats., provides in relevant part that: "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest of a 3rd party in the goods buys in ordinary course from a person in the business of selling goods of that kind . . .'. Based on the evidence in the record, it appears that Martin Mondry is a good faith purchaser who purchased the vehicle without knowledge that the sale was in violation of the ownership rights of Rodney Bush. Martin Mondry purchased the vehicle from Capitol Corvette, a licensed motor vehicle dealer, which at the time of the purchase was a company in the business of selling used motor vehicles.

² Sec. 402.326(3), Stats., provides in relevant part

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which the person deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. This subsection is applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum." However, this subsection is not applicable if the person making delivery:

- (a) Complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign; or
- (b) Establishes that the person conducting the business is generally known by that person's creditors to be substantially engaged in selling the goods of others; or
- (c) Complies with the filing provisions of ch 409

Conclusions of Law

The Administrator concludes:

1. Pursuant to sec. 402.403(2), Stats., Capitol Corvette had the power to transfer all of Rodney Bush's ownership rights in the subject motor vehicle to a buyer in the ordinary course of business.
2. Martin Mondry is a buyer in the ordinary course of business of the subject motor vehicle. Pursuant to sec. 402.403, Stats., Martin Mondry has acquired title and ownership of the subject motor vehicle.
3. Pursuant to secs. 346.26 and 227.43(1)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

Order

The Administrator orders:

The Division of Motor Vehicles of the Department of Transportation shall issue a motor vehicle title and registration to Martin G. Mondry for the 1985 Chevrolet Corvette, VIN 1G1YY0780F5128444, which is the subject of this matter.

Dated at Madison, Wisconsin on July 31, 1997.

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By: _____

David H. Schwarz
Administrator